

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RODNEY GARROTT,

Plaintiff,

v.

MICHAEL LEFRANCIS, et al.,

Defendants.

CASE NO. C07-131RSM

ORDER ADOPTING REPORT AND
RECOMMENDATION

This matter is before the Court for consideration of the Report and Recommendation filed by the Hon. Mary Alice Theiler, United States Magistrate Judge. Dkt. # 33. The Court has reviewed the Report, the parties' objections, and relevant portions of the record. While ordinarily the Court in adopting a Report and Recommendation in its entirety will sign the proposed Order without comment, in this case the Court finds it appropriate to specifically address one point raised in defendants' objections.

In her well-reasoned and thorough Report and Recommendation, Magistrate Judge Theiler noted the complete absence of any reference to plaintiff's claims against King County in defendants' motion for summary judgment. Dkt. # 33, p. 10. She recommended denial of defendants' motion as to claims against King County on that basis. In a footnote, Magistrate Judge Theiler noted the oddity of two out-of-context paragraphs in defendants' motion, apparently taken from a completely different case, involving a different plaintiff and a different (and unrelated) factual scenario. Dkt. # 33, p. 11, n.2.

ORDER ADOPTING REPORT AND
RECOMMENDATION - 1

1 In objecting to the Report and Recommendation, defendants assert that the motion for summary
2 judgment was “intended” to be on behalf of the municipal entity (meaning King County) as well as the
3 individual defendants. Defendants blame word-processing “cut and paste” errors for the “court
4 confusion”, and assert that it was “clear from the opening statement, however, that the motion was
5 intended to include defendant King County.” Dkt. # 35, p. 11.

6 The Court was not “confused”. Defendants’ opening statement simply states that the defendants
7 “move this court for an order of summary judgment and dismissal”. *Id.*, p. 1. Nowhere do defendants
8 state that they move as to all claims against all defendants. Neither do they anywhere in their motion
9 discuss the law of municipal liability under either the doctrine of *respondeat superior* or *Monell v. New*
10 *York City Department of Social Services*, 436 U.S. 658, 690-94 (1978). The word-processing errors
11 to which defendants refer do not in any way account for the failure to argue on the merits of this claim.
12 The Court cannot construe these errors, or the silence, as raising a motion for summary judgment on the
13 claims against King County. Nor can the Court grant a summary judgment motion which was not raised.
14 The motion shall therefore be denied as to claims against King County, as well as to plaintiff’s claim of
15 excessive force against Officer LeFrancis, as set forth in the Report and Recommendation.

16 Accordingly, it is hereby ORDERED:

17 (1) The Report and Recommendation is approved and adopted;

18 (2) Defendants’ motion for summary judgment (Dkt. # 24) is GRANTED as to plaintiff’s claims
19 against Officers Cross and Ifeobu, and as to plaintiff’s claims regarding injury to his heel or foot, and
20 these claims are DISMISSED; and

21 (3) Defendants’ motion for summary judgment is DENIED as to plaintiff’s claims of excessive
22 force (by restraint) against Officer LeFrancis, and as to all claims against King County.

23 (4) The February 29, 2008 date for filing pretrial statements is hereby VACATED. The Court
24 shall issue a new scheduling Order with a trial date as well as dates for mediation, pretrial motions, and
25 pretrial statements. The Court shall also entertain a motion for appointment of counsel by plaintiff; such
26 motion must be filed within two weeks of this date.

27 ORDER ADOPTING REPORT AND
28 RECOMMENDATION - 2

1 (5) The Clerk is directed to send copies of this Order to plaintiff, to counsel for defendants, and to
2 Magistrate Judge Theiler.

3 Dated this 22nd day of February, 2008.

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5 RICARDO S. MARTINEZ
6 UNITED STATES DISTRICT JUDGE
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